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FEE RECEIVED

JUL 25 2012

**SURFACE
TRANSPORTATION BOARD**

July 24, 2012

JUL 25 2012

Karl Morell
Of Counsel

kmorell@balljanik.com

232 601

BY HAND DELIVERY

Cynthia Brown
Chief, Section of Administration
Surface Transportation Board
Office of Proceedings
395 E Street, SW
Washington, DC 20423

FILED

JUL 25 2012

**SURFACE
TRANSPORTATION BOARD**

Re: STB Finance Docket No. 35647, BNSF Railway Company –
Trackage Rights Exemption – Northern Lines Railway, Inc.

Dear Ms. Brown:

Attached for filing with the Board please find the original and ten copies of the Verified Notice of Exemption pursuant to the provisions of 49 C.F.R. § 1180.2(d)(7). Enclosed is a check in the amount of \$1,100 to cover the filing fee.

Also attached is a CD containing the Notice of Exemption and Summary.

Please time and date stamp the extra copy of the Notice and return it with our messenger.

Respectfully submitted,

Karl Morell

Karl Morell
Of Counsel

**ENTERED
Office of Proceedings**

JUL 25 2012

**Part of
Public Record**

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35647

BNSF RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
NORTHERN LINES RAILWAY, INC.

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

Courtney Biery Estes
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
BNSF Railway Company

Dated: July 24, 2012

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB FINANCE DOCKET NO. 35647

BNSF RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
NORTHERN LINES RAILWAY, INC.

VERIFIED NOTICE OF EXEMPTION
Pursuant to 49 C.F.R. § 1180.2(d)(7)

BNSF Railway Company ("BNSF"), submits this Notice of Exemption pursuant to the class exemption at 49 C.F.R. § 1180.2(d)(7), for trackage rights over certain rail lines owned by BNSF and leased to Northern Lines Railway, Inc. ("NLR").

Under 49 C.F.R. § 1180.2(d)(7), the acquisition, renewal or modification of trackage rights by a rail carrier over the lines owned or operated by any other rail carrier or carriers is exempt if the rights are (i) based on a written agreement, and (ii) not filed or sought in a responsive application in rail consolidation proceedings. The parties have entered into a Trackage Rights Agreement ("Agreement"). A redacted copy of the Agreement is attached as Exhibit 1. Un-redacted copies of the Agreement are being filed under seal simultaneously with this Notice. Also, the trackage rights are not being sought in a responsive application in a rail consolidation proceeding. Under these circumstances, the Section 1180.2(d)(7) class exemption is applicable.

Pursuant to the Board's regulations at 49 C.F.R. § 1180.4(g), BNSF submits the following information:

Section 1180.6 Supporting Information

(a)(1)(i) Description of Proposed Transaction

The Agreement between BNSF and NLR grants BNSF restricted local rights over the rail lines located between 33rd Avenue North and Milepost 5.71, located just west of the Highway I-94 overpass in St. Cloud, MN, including: (a) Track 204, located between 33rd Avenue North and Rice Junction, MN; and (b) Track 203, located between Milepost 0.0, at Rice Junction, and Milepost 5.71, located just west of the Highway I-94 overpass (the "Lines"). The use of the Lines by BNSF is restricted to movements of BNSF unit trains originating or terminating at a grain shuttle facility being constructed at approximately Milepost 5.0 on the Lines.

Name and address of tenant railroad:

BNSF Railway Company
2650 Lou Menk Drive
Fort Worth, Texas 76131

Questions regarding this transaction are to be addressed to BNSF's counsel:

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, DC 20005
(202) 638-3307

(a)(1)(ii) Consummation Date

The trackage rights will be consummated after the effective date of this Notice of Exemption.

(a)(1)(iii) Purpose Sought to be Accomplished

The trackage rights are intended to permit BNSF to move unit trains originating or terminating on the Lines. NLR will continue to serve customers along the Lines.

(a)(5) List of States in which the Party's Property is Situated

The involved trackage rights are located in the State of Minnesota.

(a)(6) Map

A map illustrating the trackage rights is attached as Exhibit 2.

(a)(7)(ii) Agreement

A redacted copy of the Agreement is attached as Exhibit 1. Un-redacted copies of the Agreement are being filed under seal simultaneously with this Notice.

Labor Protection

BNSF is agreeable to the labor protection conditions generally imposed in trackage rights proceedings as found in *Norfolk and Western Ry. Co. – Trackage Rights – BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc. – Lease and Operate*, 360 I.C.C. 653 (1980).

Environmental and Historic Matters

Environmental and historical impacts associated with trackage rights transactions generally are considered to be insignificant. Therefore, an environmental and historical report and documentation normally need not be submitted for this type of transaction, pursuant to 49 C.F.R §§ 1105.6(c)(4) and 1105.8(b)(3).

Respectfully submitted,

A handwritten signature in black ink, reading "Karl Morell", is written over a horizontal line.

Courtney Biery Estes
General Attorney
BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 78131

Karl Morell
Of Counsel
Ball Janik LLP
Suite 225
655 Fifteenth Street, N.W.
Washington, D.C. 20005
(202) 638-3307

Attorneys for:
BNSF Railway Company

Dated: July 24, 2012

SURFACE TRANSPORTATION BOARD

NOTICE OF EXEMPTION

STB FINANCE DOCKET NO. 35647

**BNSF RAILWAY COMPANY
-- TRACKAGE RIGHTS EXEMPTION --
NORTHERN LINES RAILWAY, INC.**

Northern Lines Railway, Inc. ("NLR") has agreed to grant restricted trackage rights to BNSF Railway Company ("BNSF"), over the rail lines owned by BNSF and leased to NLR located between 33rd Avenue North and Milepost 5.71, located just west of the Highway I-94 overpass in St. Cloud, MN, including: (a) Track 204, located between 33rd Avenue North and Rice Junction, MN; and (b) Track 203, located between Milepost 0.0, at Rice Junction, and Milepost 5.71, located just west of the Highway I-94 overpass (the "Lines"). The use of the Lines by BNSF is restricted to movements of BNSF unit trains originating or terminating at a grain shuttle facility being constructed at approximately Milepost 5.0 on the Lines.

The trackage rights will be consummated on or after August ___, 2012.

This notice is filed under 49 C.F.R. § 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

**TRACKAGE RIGHTS AGREEMENT
BETWEEN BNSF RAILWAY AND NORTHERN LINES RAILWAY**

THIS TRACKAGE RIGHTS AGREEMENT, (hereinafter called "Agreement") is entered into this 21st of OCTOBER 2011, ("the Execution Date") by and between BNSF Railway Company, a Delaware corporation (hereinafter called "BNSF" or "User") and Northern Lines Railway, Inc., a Delaware corporation (hereinafter called "NLR" or "Owner");

RECITALS:

WHEREAS, BNSF and NLR are parties to that certain Lease of Rail Operations and Real and Personal Property Between St. Cloud and the End of the Line in St. Joseph and Between Rice Junction in St. Cloud to the End of the Line in Cold Spring, and Selected Industries in East St. Cloud in Stearns, Sherburne and Benton Counties, Minnesota, dated as of November 22, 2004 (as amended or supplemented, hereinafter called the "Lease Agreement"); and

WHEREAS, BNSF desires to obtain trackage rights upon certain of the railroad lines leased to NLR pursuant to the Lease Agreement for the purpose of providing unit train rail service to a grain shuttle facility being constructed at St. Cloud, MN at approximately milepost 5.0 (hereinafter collectively called, "Grain Shuttle Facility"); and

WHEREAS, NLR is willing to grant BNSF trackage rights upon certain of the leased NLR railroad lines subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, obligations and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

Section 1. INCORPORATION OF RECITALS, DEFINITIONS

Any capitalized terms used in the body of this Agreement but not specifically defined herein shall have the meanings given to such terms in the general conditions (hereinafter called "General Conditions") set forth in Exhibit "B", attached to and made a part of this Agreement. Additionally, the parties agree that for the purposes of this Agreement, the following terms shall have the meanings indicated below:

- (a) "Environmental and Safety Requirements" means and includes all Legal Requirements relating to the protection, preservation or conservation of the environment and/or public or worker health or safety including, without limitation, any Legal Requirements covering the handling, storage, treatment and disposal of Hazardous Materials; and
- (b) "Legal Requirements" means and includes all applicable statutes, laws, rules, regulations, ordinances, orders, codes, permits, licenses, and requirements

(including consent decrees, judicial decisions and administrative orders) of all federal, state and local governments, departments, commissions, agencies and boards, including, without limitation, laws, statutes, regulations or rules respecting the operation, condition, inspection or safety of trains, locomotives, cars and equipment and all applicable Environmental and Safety Requirements, all as amended or supplemented.

- (c) **"Unit Train"** shall mean a train consisting of ninety five (95) or more cars loaded with grain (or the returning empty movement), that originates or terminates from or to a single location.

Section 2. TRACKAGE SUBJECT TO AGREEMENT

BNSF's trackage rights under this Agreement will be over the NLR lines and tracks between the west side of the thirty-third (33rd) Avenue street crossing in St. Cloud, MN (approximately one half (1/2) mile west of the St. Cloud Yard) and Milepost 5.71, which is a point just west of the Highway I-94 overpass, which lines are shown on Exhibit "A", attached to and made a part of this Agreement. This includes Track 204, the St. Joseph, MN main line from the West side of the thirty-third (33rd) Avenue street crossing to Rice Junction, MN, and the Cold Spring main line (Track 203) from Rice Junction (Milepost 0.00) to just west of the Highway I-94 overpass (Milepost 5.71). The NLR tracks and lines described in this Section and shown on Exhibit A shall be referred to as **"Joint Trackage,"** as that term is further described in the General Conditions.

Section 3. GENERAL CONDITIONS, CONFLICTS BETWEEN PROVISIONS

The trackage rights granted in this Agreement are subject to the terms and conditions herein and the General Conditions. In the event there is a conflict between the terms in the body of this Agreement and the General Conditions, then the terms contained in the body of this Agreement shall prevail. In the event there is a conflict between the terms of this Agreement and the Lease Agreement, then the terms contained in this Agreement shall prevail.

Section 4. GRANT OF TRACKAGE RIGHTS

(a) Subject to the terms and conditions contained herein, NLR grants to BNSF the right to use the Joint Trackage to provide Unit Train rail service to and from the Grain Shuttle Facility, including the movement of empty cars. BNSF's use of the Joint Trackage shall be in common with NLR and any other railroad company or companies that use or access the Joint Trackage, now or in the future, pursuant to authorization by NLR.

(b) Except as set forth otherwise herein, the parties understand and agree that BNSF shall not have the right to:

- (i) Except for the Grain Shuttle Facility, switch industries or transload upon the Joint Trackage; or

- (ii) Set out, pick up or store Equipment upon the Joint Trackage, or any part thereof, except as otherwise provided herein or in **Exhibit "B"**; or
- (iii) Except for the Grain Shuttle Facility, serve any industry, team or house track, transload, intermodal or auto facility now existing or hereafter located along the Joint Trackage; or
- (iv) Permit or admit any third party to use all or any portion of the Joint Trackage; or
- (v) Detour trains of any other railroad over or upon the Joint Trackage.

(c) BNSF agrees to perform its operations (hereinafter called "**BNSF's Operations**") and handle its Equipment and Unit Trains in a manner that will not unreasonably interfere with or impair the use of the Joint Trackage by NLR.

(d) Notwithstanding any provision to the contrary in this Agreement, BNSF agrees not to commence BNSF's Operations over the Joint Trackage until an agreement is executed between NLR and the rail customer located at the Grain Shuttle Facility, which agreement would address various track relocation and construction matters related to the Joint Trackage. NLR will provide BNSF with written notice when such an agreement has been executed.

Section 5. INSPECTION

At all times during the Term (as defined below) and on reasonable advance notice to NLR, BNSF shall have the right to enter the Joint Trackage and make inspections to determine compliance with the terms of this Agreement. In no event shall BNSF be obligated to make any such inspections, and BNSF shall not be liable for any failure to identify any matters which are not in compliance with this Agreement. In no event shall any inspection by BNSF be deemed a waiver by BNSF of compliance with any terms or conditions of this Agreement by NLR.

Section 6. COMPENSATION

(a)

(b) The Per Car Rate shall be adjusted July 1, 2012 and each July 1 thereafter, based upon the annual percentage change in the AAR's Annual Indexes of Chargeout Prices and Wage Rates (1977=100), for the Western District and specifically by the Material Prices, Wage Rates and Supplements Combined (excluding fuel) ("Index"). The adjustment for July 1, 2012 shall be based on the percentage change in the Index from 2010 to 2011, and subsequent adjustments on each July 1 during the term of this Agreement shall likewise be based on the percentage change

in the Index for the immediately previous calendar year (the "Most Recent Year") as compared to the Index for the calendar year prior to the Most Recent Year.

Additionally, in calculating adjustments, (i) all published values will be rounded to a thousandth of an index point; (ii) all percent change calculations will be rounded to a tenth of a percent; and (iii) the Per Car Rate will be rounded to the nearest whole cent. The parties agree that the rounding rule used will be that any fraction less than one-half will be dropped, while any fraction equal to or greater than one-half will be rounded up to the next higher value.

In the event the AAR (or any successor organization) ceases to publish the Index, the parties shall determine a substitute index. The substitute index shall be the index that most closely matches the Index. The substitute index shall be used for the remainder of the term of the Original Agreement. If the parties cannot agree on a substitute index within ninety (90) days after the cancellation of the Index, either party may submit the matter to be determined by binding arbitration in accordance with Section 12.

Section 7. CAPACITY IMPROVEMENTS AND CHANGES IN AND/OR ADDITIONS TO THE JOINT TRackage

(a) In the event a connection track or tracks (hereinafter called "BNSF Connection Tracks") is requested or needed by BNSF to utilize the rights granted to BNSF herein, NLR (or its agent or contractor) shall construct, maintain, repair, and renew, at BNSF's sole cost and expense, such BNSF Connection Tracks. BNSF Connection Tracks shall be considered an improvement to the Leased Premises and BNSF shall own such Connection Tracks. NLR shall be permitted to use such BNSF Connection Tracks during the Term as if such BNSF Connection Tracks were originally included as part of the Leased Premises. Notwithstanding the foregoing, NLR grants BNSF a nonexclusive, limited license over that portion of the Leased Premises between the right-of-way line and the clearance point for BNSF's use of the BNSF Connection Tracks. Following construction, the BNSF Connection Tracks shall be part of the Joint Trackage and subject to the terms and conditions of this Agreement and the Lease Agreement. NLR (or its agent or contractor) shall construct, maintain, repair, and renew, at the sole cost and expense of BNSF, those portions of track connections between the headblock and clearance point which are located on the Leased Premises.

(b) In the event that Legal Requirements require Changes in and/or Additions to the Joint Trackage, then NLR shall make such Changes in and/or Additions to the Joint Trackage, which, to the extent set forth in the Lease Agreement, shall be at NLR's expense. Except as provided in Section 7(c) below, if BNSF and NLR mutually determine that Capacity Improvements and/or Changes in and/or Additions to the Joint Trackage, including, but not limited to, construction of additional main trackage, crossovers, sidings, powered switches, signal facilities, centralized traffic control, grade separations, and future connections are required for the safe and efficient operation on, over or along the Joint Trackage, then NLR shall make

such Capacity Improvements and/or such Changes in and/or Additions to, with the allocation of cost to be mutually agreed upon by BNSF and NLR. Notwithstanding any foregoing provisions in this Section 7(b), in no event shall NLR bear the cost of capital expenditures that are necessary to accommodate BNSF's Operations and that are not necessary for NLR's operations.

(c) NLR shall rehabilitate or cause to have rehabilitated the Joint Trackage pursuant to, in conformity with, and subject to, the terms and conditions of the capital project (hereinafter referred to as "**Capital Project**") as set forth in Exhibit "C" attached hereto and made a part of this Agreement. Upon completion of the Capital Project, NLR shall maintain, repair and renew the Joint Trackage pursuant to the terms and conditions of this Agreement.

Section 8. MISCELLANEOUS PROVISIONS

(a) This Agreement and any claims, disputes or controversies arising hereunder shall be governed by and construed in accordance with the laws of the state of Minnesota, without regard to its conflicts of laws provisions.

(b) All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight express service (e.g., Federal Express) or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for BNSF:

AVP Contracts and Joint Facilities
AVP Shortline Development
2650 Lou Menk Drive
Fort Worth, Texas 76161
Phone: 817-352-2270

If intended for NLR:

President
2015 6th Street North
St. Cloud, MN 56303 Phone: 320-253-5983

With a copy to:

Scott Morgan

Anacostia Rail Holdings Co.
Railway Exchange Building
Suite 600
224 S. Michigan Ave. 60604
Chicago, Illinois

Notice of address change may be given any time pursuant to the provisions of this Section 8.

(c) If any provision in this Agreement is held invalid, illegal or unenforceable, the remaining provisions of this Agreement remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable. If any provision is held invalid, illegal or unenforceable, the parties agree to negotiate a revised or replacement provision so as to provide both parties with the benefit of the bargain each negotiated.

(d) This Agreement may not be modified or amended except by an instrument in writing signed by authorized representatives of both BNSF and NLR.

(e) This Agreement (or any amendments or supplements hereto) may be executed in any number of counterparts and by NLR and BNSF in separate counterparts, each of which shall be deemed an original. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

(f) Except as may be expressly provided otherwise in this Agreement, no failure on the part of either party or any of its agents to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver; nor shall any single or partial exercise by either party or any of its agents of any right, power or remedy hereunder preclude any other or further exercise of any other right, power or remedy.

(g) This Agreement, which includes its exhibits and appendices, constitutes the final agreement between the parties concerning the subject matter herein. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this Agreement.

Section 9. GOVERNMENTAL OR REGULATORY APPROVALS

BNSF shall be responsible for obtaining, at BNSF's sole cost and expense, the consent, exemption, approval or authority of applicable governmental agencies or departments, including, but not limited to the STB (hereinafter collectively called "**Government Approvals**"), necessary for BNSF's use and operation on, over or along the Joint Trackage pursuant to this Agreement and Legal Requirements. In the event any applications, petitions or filings by NLR are required for BNSF to obtain the necessary Government Approvals pursuant to the preceding sentence, then NLR will cooperate with BNSF and undertake and diligently prosecute any applications, petitions or filings by NLR at BNSF's expense.

Section 10. TERM AND TERMINATION

This Agreement is conditioned upon and becomes effective upon the effective date contained in the necessary Government Approvals consenting to or authorizing the trackage rights granted hereunder. Unless terminated earlier pursuant to the terms and conditions set forth herein or the General Conditions, this Agreement shall remain in effect until termination or expiration of the Lease Agreement (hereinafter referred to as the "Term").

Section 11. CONFIDENTIALITY

This Agreement is strictly confidential between the parties. No party shall disclose the terms and conditions of this Agreement other than to its attorneys, as required by law or as otherwise agreed in writing between the parties. The party making a disclosure required by law shall notify the other party sufficiently in advance of any such disclosure so as to provide such party with an opportunity to take steps to limit the disclosure.

Section 12. ARBITRATION

(a) If at any time a question or controversy shall arise between the parties hereto in connection with this Agreement upon which the parties cannot agree, either party shall have the right to require a meeting of designated representatives with authority to settle the matter within thirty (30) days of written notice of a desire to meet; if it cannot be resolved within thirty (30) days after the meeting of the parties, then the aggrieved party may demand arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties shall be governed by the rules and procedures set forth in this Section 12.

(b) If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association, which shall designate said appointment from the CPR Panel of Distinguished Neutrals, or other similar body of competent neutral arbitrators which may be agreed upon between the parties, upon application by either party after ten (10) days' written notice to the other party. The two arbitrators so chosen shall select one additional arbitrator, experienced in railroad commercial matters, to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed in the same manner hereto before stated.

(c) Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of

hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. In no event shall the arbitrator(s) have authority to award indirect, special, consequential, punitive or exemplary damages. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or the American Arbitration Association, as the case may be, shall appoint another arbitrator, experienced in railroad commercial matters, to act in the arbitrator's place.

(d) After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court in the United States of America having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under this Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

(e) Each party to the arbitration shall pay all compensation, costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

(f) The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, and may make dispositive motions in accordance with Federal Rules of Civil Procedure 12 and 56, as each may be amended from time to time; *provided*, the arbitrator(s) may limit discovery to promote efficient disposition of the claims.

(g) Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points (or the maximum interest allowed by applicable law, if lower), shall be applied to any and all arbitration awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. For purposes of this Section 12, the term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

SECTION 13. EFFECT ON LEASE AGREEMENT.

The terms set forth in this Agreement shall not supersede or amend the terms of the Lease Agreement, except to the extent provided herein. In the event of conflict between the terms of the Lease Agreement and this Agreement, the terms of the Lease Agreement shall govern with respect to any matters not concerning the Joint Trackage, and the terms of this Agreement shall govern with respect to any matters concerning the Joint Trackage. For purposes of clarity, the

liability and indemnity provisions in this Agreement (including, without limitation, the liability, indemnity and cleanup provisions relating to environmental matters, as set forth in Sections 4 and 5 of Exhibit B hereto) arising out of, in connection with or accruing as a result of BNSF's exercise of trackage rights over the Joint Trackage shall be governed in accordance with the terms of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate the day and year first above written.

BNSF RAILWAY COMPANY

By: Dean H. Wise

Printed: Dean H. Wise

Title: VP - Network Strategy

NORTHERN LINES RAILWAY, INC.

By: Daniel C. Rizke

Printed: DANIEL C. RIZKE

Title: PRESIDENT

Exhibit "A" to BNSF
Trackage Rights over NLR
October 21, 2011

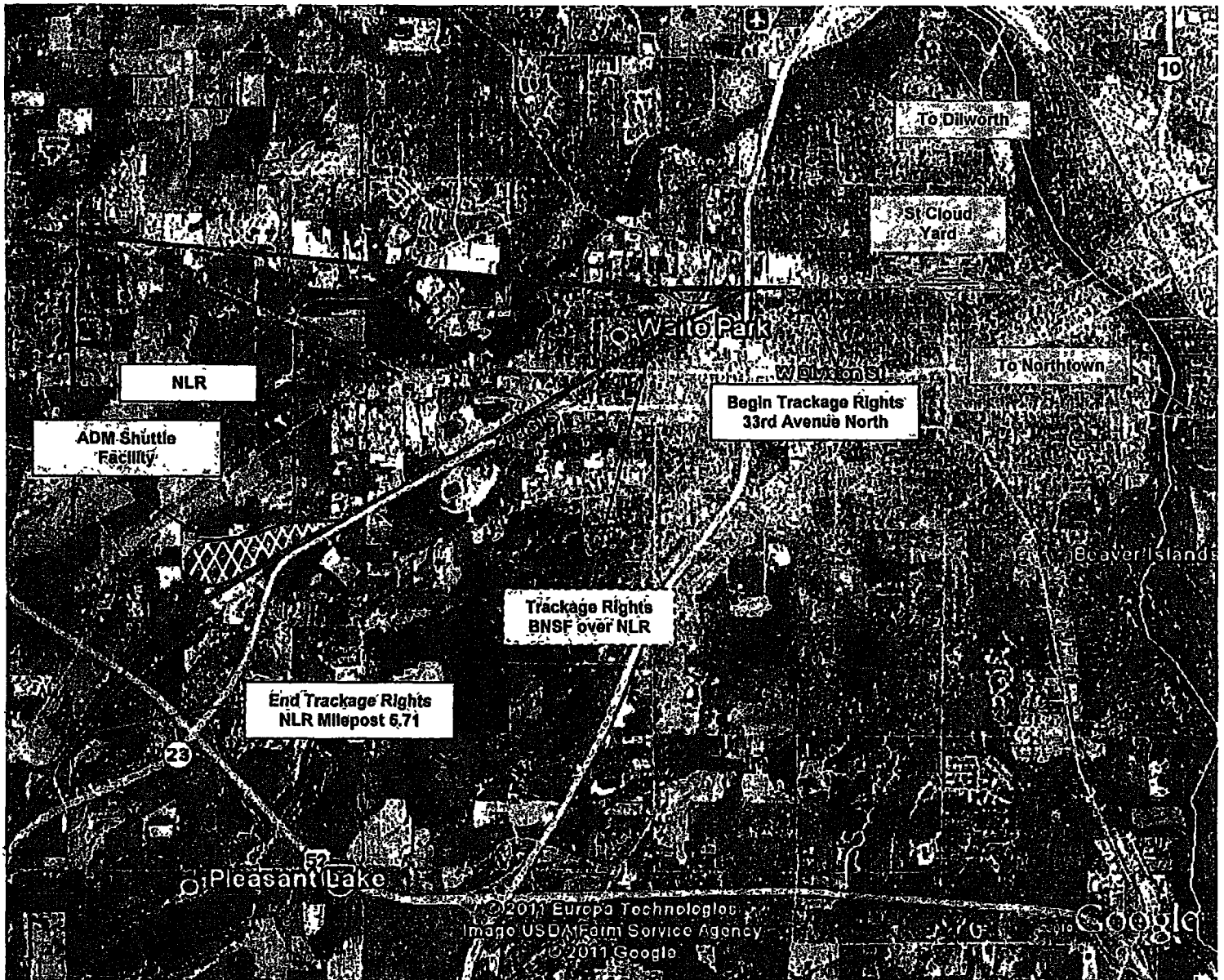


EXHIBIT "B"
GENERAL CONDITIONS TO TRACKAGE RIGHTS AGREEMENT GOVERNING
BNSF'S TRACKAGE RIGHTS TO SERVE GRAIN SHUTTLE FACILITY

Section 1. DEFINITIONS

To the extent used in this Exhibit "B" and/or the Agreement, the following terms shall have the meanings indicated below:

1.1 "**AAR**" shall mean the Association of American Railroads.

1.2 "**Agreement**" shall mean that certain Trackage Rights Agreement between BNSF and NLR dated ~~October 21~~ 21, 2011, which Trackage Rights Agreement includes this Exhibit "B" and all other exhibits and appendices attached thereto.

1.3 "**Annual**" shall mean a calendar year.

1.4 "**Capacity Improvements**" shall mean projects or improvements that expressly increase the capacity or through-put over the Joint Trackage or a portion thereof and provide utility beyond ordinary and/or programmed maintenance, the cost of which is chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the effective date of the Agreement.

1.5 "**Car**" shall mean one (1) rail car except in the case of an articulated rail car where the number of Cars shall be determined by the AAR Car Type Code as defined in the Universal Machine Language Equipment Register Specification Manual or such successor manual, if any. The second character in the Car Type Code field covering codes "Q" and "S" will be factors used to determine the car count for an articulated unit. For example, AAR Car Type Code S566 would be equal to five (5) Cars as an articulated rail car with a Car Type Code of S566 has five wells capable of handling 40' to 48' containers in each well. Notwithstanding the foregoing, car count data for articulated units are subject to change upon further development of technology for separate units using car numbers. Each locomotive shall be counted as two (2) Cars.

1.6 "**Changes in and/or Additions to**" shall mean line changes to or realignment of the Joint Trackage or a portion thereof and/or new infrastructure on the Joint Trackage that is not otherwise a replacement for existing infrastructure, the cost of which is chargeable in whole or in part to Property Accounts (defined below) under STB (defined below) accounting standards in effect as of the effective date of the Agreement.

1.7 "**Equipment**" shall mean (i) trains, locomotives, cars (loaded or empty), intermodal units, and cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks or right-of-way that, at the time of any occurrence, are being operated on, over or along the Joint Trackage, and/or (iii) vehicles and machinery that, at the time of any

occurrence, are located on, over or along the Joint Trackage for the purpose of maintenance or repair thereof or the clearing of wrecks thereon:

1.8 **"Hazardous Materials"** shall mean and include all toxic or hazardous substances, pollutants, waste or contaminants to which liability or standards of conduct may be imposed under any Environmental and Safety Requirements including, without limitation, (a) petroleum or petroleum based products or any derivatives or hazardous constituents thereof or any additives thereto, (b) fuels (including motor fuels, diesel, methane and other natural gas), (c) waste oils, lubricating oils and cleaning solvents, (d) ammonia, glycol and freon, (e) any "Hazardous Substances," "Hazardous Materials," "Regulated Substances" or "Toxic Substances," or similarly defined terms, as set forth in any Legal Requirements, and/or (f) any other substances at levels greater than those allowed by applicable Legal Requirements.

1.9 **"Joint Trackage"** shall mean the track structure of Owner as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of Owner and all Changes in and/or Additions, including any Capacity Improvements, to said track structure now or in the future.

1.10 **"Lease Agreement"** shall mean that certain agreement dated November 22, 2004 and further described in the Recitals of this Agreement.

1.11 **"Leased Premises"** shall have the same meaning given to such term in the Lease Agreement.

1.12 **"Ordinary Maintenance"** shall mean usual and routine work or maintenance performed in the daily upkeep of the Joint Trackage, consistent with industry custom and practice, the cost of which is not chargeable in whole or in part to Property Accounts under STB accounting standards in effect as of the effective date of this Agreement.

1.13 **"Owner"** shall mean Northern Lines Railway, its successors and assigns. The designated nomenclature of "Owner" is a term of convenience used by the parties hereto and shall not signify or imply actual ownership status of any particular piece of property or trackage.

1.14 **"Programmed Maintenance"** shall mean work or maintenance that is normally pre-planned, non-periodic and generally involves substantial replacements or renewals of existing assets, the cost of which is chargeable to Property Accounts under STB accounting standards in effect as of the effective date of this Agreement. Further, the replacement or renewal should have the same utility as the asset replaced/renewed, without necessarily reproducing exactly any particular characteristic of the original asset or property.

1.15 **"Property Accounts"** shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the STB, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.16 "**STB**" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.17 "**User**" shall have the meaning given to such term in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

2.1 Owner shall have sole charge of the maintenance and repair of the Joint Trackage with its own supervisors, labor, materials and equipment. Owner, from time to time, may make such Changes in and/or Additions to the Joint Trackage as shall be required by Legal Requirements, or as Owner, in its sole discretion, shall deem necessary, subject to Section 2.2. Such Changes in and/or Additions to the Joint Trackage shall become a part of the Joint Trackage or in the case of retirements shall be excluded from the Joint Trackage.

2.2 Unless otherwise mutually agreed to by the parties in writing, upon completion of the Capital Project (as that term is defined in Section 7(c) of this Agreement), Owner shall (i) keep and maintain the Joint Trackage on a consistent basis at no less than the FRA Class 1 standards (subject to periodic temporary slow orders and superintendant's bulletins issued in the ordinary course of business), and (ii) maintain at least the physical capacity of the Joint Trackage as of the effective date of the Agreement (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.). In the event that User desires that the Joint Trackage be improved to a condition in excess of the standard set forth in this Section 2.2, or desires that other Changes in and/or Additions to be made to the Joint Trackage, Owner may, in Owner's sole discretion, make such Changes in and/or Additions to the Joint Trackage if funded in advance solely by User. Thereafter, such Changes in and/or Additions to the Joint Trackage shall become part of the Joint Trackage and shall be maintained by Owner in compliance with the Agreement. Notwithstanding any provision to the contrary in this Agreement, BNSF shall not have any claim against Owner based upon the condition or maintenance of the Joint Trackage.

2.3 Owner shall have the exclusive right to perform all construction, operation, maintenance, repair and renewal of the Joint Trackage. Owner shall make reasonable efforts to ensure that User is given the same advance notice of maintenance plans and schedules as is provided to Owner's personnel.

2.4 The trackage rights granted hereunder shall give User access to and joint use of the Joint Trackage equal to Owner's use of the Joint Trackage. The management, operation (including dispatching) and maintenance of the Joint Trackage shall, at all times, be under the exclusive direction and control of Owner. Additionally, the movement of Equipment over and along the Joint Trackage shall at all times be subject to the exclusive direction and control of Owner's authorized representatives and in accordance with such reasonable operating rules as Owner shall from time to time institute (including, without limitation, Owner's General Code of

Operating Rules) except that Owner shall not discriminate against trains of User (including with respect to the dispatching of such trains). User shall, at User's sole cost and expense, obtain, install and maintain necessary communication equipment to allow User's Equipment to communicate with Owner's dispatching and signaling facilities. Owner shall provide User with prior notice of the adoption or implementation of new communication or signaling systems on the Joint Trackage which have not generally been adopted in the railroad industry as of the date of such adoption or implementation.

2.5 If the use of the Joint Trackage shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.6 Owner may from time to time substitute any track or tracks included in the Joint Trackage and delineated on Exhibit A to the Agreement as long as User is provided with a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Trackage. When substitute tracks are used as provided herein, the terms and conditions of the Agreement shall apply to User's access and use of such substitute tracks as if all movement had been made over the Joint Trackage.

2.7 Unless provided otherwise in the Agreement, each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel, train supplies and other supplies necessary for the operation of its own Equipment over the Joint Trackage. In the event a party furnishes labor, fuel or train and other supplies to another party, then the receiving party shall promptly, upon receipt of billing therefor, reimburse the furnishing party for its reasonable costs thereof, including customary additives.

2.8 Unless provided otherwise in the Agreement, User shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in User's account on the Joint Trackage. Except as may be specifically provided for in the Agreement, nothing contained herein is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Trackage.

2.9 (a) Except as otherwise may be provided in the Agreement, User shall operate its Equipment over the Joint Trackage with its own employees.

(b) User shall be responsible for ensuring that its employees are certified and qualified in compliance with Legal Requirements and shall ensure that all its employees engaged in or connected with the operations of User on, over or along the Joint Trackage shall, at all times, be in compliance with Legal Requirements. Unless provided otherwise in the Agreement, pending qualification of train and engine crews of User or as requested by User thereafter, Owner shall furnish a pilot or pilots, at the sole expense of User, as deemed necessary by Owner to assist in operating trains of User on, over or along the Joint Trackage.

Upon request of User and at User's sole cost and expense, Owner shall qualify one or more of User's supervisory officers as pilots and such supervisory officer or officers so qualified shall further qualify employees of User engaged in or connected with User's operations on, over or along the Joint Trackage.

2.10 If any employee of User shall neglect, refuse or fail to abide by Owner's rules, instructions and restrictions governing the operation on, over or along the Joint Trackage or Legal Requirements, such employee shall, upon written request of Owner, be prohibited by User from working on, over or along the Joint Trackage. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of User, then upon such notice presented in writing, Owner and User shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees participating in such investigation. Notice of investigations to User's employees pursuant to this Section shall be given by User's officers, and such investigations shall be conducted in accordance with the terms and conditions of schedule or labor agreements between User and its employees. If, in the judgment of Owner, the result of any investigation warrants that an employee of User be withdrawn from service on, over or along the Joint Trackage, then User shall withdraw such employee from such service upon Owner's written request for withdrawal. User releases, indemnifies, defends and holds Owner harmless from and against any and all claims and expenses arising from or related to any withdrawal pursuant to this Section.

If the disciplinary action is appealed by an employee of User to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, Owner shall be given reasonable opportunity to review and provide comments on User's brief or submission before it is filed with such tribunal. If the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on, over or along the Joint Trackage.

2.11 If any Equipment of User is bad ordered enroute on the Joint Trackage and (i) it is necessary that it be set out, and (ii) only light repairs to the Equipment are required, then such bad ordered Equipment shall be promptly repaired and removed from the Joint Trackage by User. Owner may, upon request of User and at User's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of Owner shall be considered Sole Employees (as hereinafter defined) of User and Sole Property (as hereinafter defined) of User while performing repairs, moving Equipment or traveling to or from Owner's terminal pursuant to the preceding sentence. However, should Owner's employees after repairing such bad ordered Equipment for User move directly to perform service for Owner's benefit rather than returning to Owner's terminal, then User's exclusive time and liability will end when Owner's employees depart for work to be performed for Owner's benefit. In the case of repairs by Owner to freight cars in User's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the AAR (hereinafter collectively called "Interchange Rules"), in effect on the date of performance of the repairs. Owner shall then prepare and submit billing

directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and Owner shall prepare and submit billing directly to and collect from User for handling line responsibility items as determined under said Interchange Rules. If any car owner refuses or otherwise fails to make payments for car owner responsibility items, then User shall be responsible for paying Owner for such repairs. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.12 If Equipment of User shall become derailed, wrecked, or otherwise disabled while upon the Joint Trackage, it shall be re-railed or cleared by Owner, except that employees of User may, with Owner's permission, re-rail User's derailed Equipment on the Joint Trackage whenever use of motorized on or off track equipment is not required and prior permission was granted by Owner. Any rerailing of Equipment by User shall be subject to, and User agrees to follow, directions of Owner. Owner reserves the right to determine whether to re-rail or clear Equipment of User when, in the sole judgment of Owner, Owner deems it advisable to do so to minimize delays and interruptions to train movement. The reasonable costs and expenses of rerailing or clearing derailed, wrecked, or disabled Equipment and any Loss or Damage incidental thereto shall be borne by the parties in accordance with Section 5 of these General Conditions. Work and services performed under this Section shall be billed in accordance with Section 3 of these General Conditions.

2.13 In the event Equipment of User shall be forced to stop on the Joint Trackage, and such stoppage is due to insufficient hours of service remaining among User's employees, or due to mechanical failure of User's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.11), or to any other cause not covered by Section 2.12 (including the failure of User to promptly repair and clear bad ordered Equipment pursuant to Section 2.11), and such Equipment is unable to proceed, or if a train of User fails to maintain the speed required by Owner on the Joint Trackage, or if, in emergencies, disabled Equipment is set out of User's trains on the Joint Trackage, Owner shall have the option, without prejudice to any other rights or remedies which may be applicable, to furnish motive power or such other assistance (including but not limited to the right to re-crew User's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Trackage. The reasonable costs and expenses of rendering such assistance shall be borne by User. Work and services provided under this Section shall be billed in accordance with Section 3 of these General Conditions.

2.14 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement.

Section 3. BILLING

3.1 If necessary, User will furnish to Owner on or before the fifteenth (15th) day of each month a statement giving the number of loaded Cars moving pursuant to this Agreement operated by User over the Joint Trackage for the preceding month in a format mutually agreed to

by the parties. Such data shall include car initial and number, date of loaded movement and Grain Shuttle Facility origination.

3.2 To receive payment for traffic moving pursuant to this Agreement, Owner will transmit electronically (or via another mutually agreed upon method of transmission) to BNSF an invoice of charges due Owner by User.

The invoice sent to User must include the following information:

1. Car initial and number.
2. Date of loaded movement.
3. Grain Shuttle Facility origination.
4. Five (5) digit STCC number.
5. Amount due for each loaded Car.

The invoice is to be sent to BNSF via electronic mail to liabilityrating2@bnsf.com or, if electronic mail is unavailable, mailed to the following address. The invoice shall provide the name and phone number of a contact at NLR.

Revenue Management
Attn: Contract Administration, Rating, Accruals and Disbursements - Shortlines
BNSF Railway
2500 Lou Menk Drive
Fort Worth, TX 76131-2828

3.3 User shall pay invoices in United States money within thirty (30) days after the invoice date. Invoices shall include a statement of the amount due and services rendered during the applicable billing time period.

3.4 Errors or disputed items in any invoice shall not be deemed a valid excuse for delaying payment of undisputed portions of such invoice. User shall notify Owner in writing of any errors or disputed items within fifteen (15) days after such receipt of Owner invoices. User and Owner shall work together in good faith to resolve any billing errors or disputes within thirty (30) days after Owner receiving User's written notice setting forth such errors and/or disputes. If the parties are unable to resolve the billing errors or disputes in accordance with this provision, either party may commence arbitration in accordance with Section 12 of the Agreement. Notwithstanding the foregoing, no dispute or exception to any invoice shall be honored, recognized, or considered after the expiration of three (3) years from the last day of the calendar month during which the invoice is rendered, and no invoice shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) if in connection with a project for which a roadway completion report is

required, after the last day of the calendar month in which the roadway completion report is made covering such project, retroactive up to three (3) years from date of billing, or (iii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability(ies) established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.5 Books, accounts, and records of each party that are directly related to the subject matter of this Agreement shall at all reasonable times, with prior notice be open to inspection by the authorized representatives and agents of the parties; *provided, that*, the parties agree that such books, accounts and records shall be used solely for purposes of administering or enforcing this Agreement and shall not be disclosed to any third parties (other than attorneys or accountants of a party hereto that such party hereto causes to be bound by the same use and disclosure restrictions set forth in this Section 3.3).

3.6 If any amount becomes payable by Owner to User under the Agreement, the provisions of Section 3 of this Exhibit "B", to the extent applicable, shall apply to Owner as the paying party.

3.7 If User fails to make any undisputed payment when due and such failure continues for a period of ten (10) days after notice in writing of such failure is given by Owner to User, or if User fails to cure a User default within the time period set forth in Section 7.2 or otherwise in the Agreement, then Owner may, as its election, exclude User from using or operating on, over or along the Joint Trackage until such failure is cured by User. The parties also agree that any failure to make any payment which is the subject of arbitration or litigation between the parties shall not be deemed a default hereunder, pending the final decision in such arbitration or litigation. In the event User is excluded from use of the Joint Trackage, User shall surrender to Owner all said Joint Trackage and shall have no claim or demand against Owner for such exclusion.

Owner may waive any default of User hereunder, but no action of Owner in waiving any default shall affect or impair any other rights of Owner resulting therefrom.

Section 4. COMPLIANCE

4.1 With respect to operation of Equipment on, over or along the Joint Trackage, User shall comply with all Legal Requirements. If any failure by User to comply with Legal Requirements shall result in a fine, penalty, cost or charge being imposed or assessed on or against Owner, Owner shall give prompt notice of such fine, penalty, cost or charge to User and User shall promptly reimburse, indemnify, defend and hold Owner harmless from and against any such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith.

4.2 User also agrees to comply fully with all Environmental and Safety Requirements. User shall not handle, treat or dispose of Hazardous Materials on the Joint Trackage. User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner that User is in compliance with this Section 4. Nothing in this Section 4 shall limit the prohibitions set forth in this Section 4.2.

User shall be responsible for filing any reports required under Legal Requirements for any derailment, accident, incident, vandalism, bad ordered Equipment, wreck (hereinafter collectively called, for purposes of Section 4 and Section 5, "**Derailment**") involving Hazardous Materials on or along any segment of the Joint Trackage in connection with User's Equipment and/or Equipment operated by or on behalf of User. User shall advise Owner and the owner/shipper of the Hazardous Materials involved in the Derailment immediately.

In the event of a Derailment on or along any segment of the Joint Trackage, User shall assume responsibility for cleaning up any release of Hazardous Materials from User's Equipment in accordance with all Legal Requirements. Owner may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of the released Hazardous Materials, if any, and the cleanup effort. Any costs related to the cleanup and removal of Hazardous Materials shall be governed by Section 5 of these General Conditions.

If a Hazardous Materials release is caused by a Derailment involving Equipment of User, or by Equipment operated by User, and such release results in the contamination of real property or water on, along or adjacent to the Joint Trackage (whether such real property or water is owned by Owner or a third party), then User shall assume initial responsibility for emergency cleanup of such Hazardous Materials so as to mitigate further damage. After User's initial clean up efforts, User shall be responsible for performing the appropriate remedial measures in compliance with Legal Requirements. Any costs associated with cleaning up real property or water on, along or adjacent to the Joint Trackage contaminated by Hazardous Materials shall be governed by Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a Derailment involving Equipment of User, or by Equipment operated by or on behalf of User, User shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Trackage, Owner, at its option, may transfer the Hazardous Materials and any costs associated with such transfer shall be governed by Section 5 of these General Conditions. Transfers of Hazardous Materials by User shall only be conducted after being authorized by Owner.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Trackage or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties or by an event or circumstance not otherwise described in Section 4.2 on, along or adjacent to any segment of the Joint Trackage, as between the parties hereto, User shall assume responsibility for reporting and cleaning up any release of Hazardous Materials in accordance with this Section 4, and costs related to the cleanup and removal of Hazardous Materials shall be governed by Section 5 of these General Conditions.

Section 5. LIABILITY

5.1 The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. No provision of this Section 5 shall be interpreted to restrict or deprive a party of its right to independently hold the other party liable for any failure to perform or observe a covenant, obligation or duty created by this Agreement; *provided, that*, to the extent Loss and/or Damage (as that term is defined in Section 5.2, below) is covered by the express provisions in this section, the provisions of section 5 shall be the sole remedy of the parties. The provisions of this Section 5 shall not supersede or amend Articles XII and XIII of the Lease Agreement except to the extent set forth in Section 13 of the Agreement.

5.2 For the purpose of this Section 5, the following definitions shall apply:

"Loss and/or Damage" shall mean all claims, liability, (except liability for punitive and exemplary damages), cost, and expense of every character including, without limitation, amounts paid or to be paid under any State or Federal compensation law (including without limitation, the Federal Employers Liability Act) and all costs and expenses incidental to any claims, suits, demands and judgments (including, without limitation, attorneys' fees, experts' fees, court costs and other costs of investigation and litigation) incident to (a) loss or destruction of or damage to property (including, without limitation, property of the parties hereto and property being transported by the parties and including, without limitation, natural resource damage, environmental clean-up costs and penalties, judgments or fines associated with a release of any contaminants) arising out of or in connection with the operation by the parties hereto on, over or along the Joint Trackage or the rights and obligations under this Agreement, and (b) injury to and death of persons arising out of or in connection with the operation by the parties hereto on, over or along the Joint Trackage or the rights and obligations under this Agreement. Without limiting the generality of the foregoing, with respect to a wreck or Derailment, Loss and/or Damage shall include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or Derailment and any liabilities for any third party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or Derailment. Loss and/or Damage shall be reduced by any amount

recovered from third parties.

"Joint Employees" shall mean one or more officers, agents, employees, or contractors of Owner while actually engaged in maintaining, repairing, constructing, renewing, removing, inspecting, or operating (excluding operating the trains of the parties hereto) the Joint Property (as hereinafter defined) or in making Changes in and/or Additions to or Capacity Improvements thereto for the benefit of both the parties hereto, or while preparing to engage in, enroute to or from, or otherwise on duty incident to performing such service. Such officers, agents, employees, or contractors shall not be deemed "Joint Employees" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of only one of the parties hereto.

"Joint Property" shall mean the Joint Trackage and all Equipment while engaged in maintaining, repairing, constructing, renewing, removing, inspecting, operating (excluding operating the trains of the parties hereto), managing, improving or similar functions of or for the Joint Trackage or in making Changes in and/or Additions or Capacity Improvements thereto for the benefit of both parties hereto, or while preparing to engage in, enroute to or from, or otherwise incident to performing such service. Such Equipment shall not be deemed "Joint Property" while enroute from the performance of such work as hereinbefore described to perform service for the benefit of only one of the parties hereto.

"Sole Employees" and **"Sole Property"** shall mean (as applicable) one or more officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, used or handled for, or otherwise on duty incident to, performing service for the benefit of one, but not both parties hereto. If an officer, agent, employee, contractor or Equipment, is engaged in, enroute to or from, or otherwise on duty incident to performing service for the benefit of only one party hereto, such person shall be deemed the Sole Employee or Sole Equipment (as applicable) of such party. Notwithstanding any provision to the contrary in this paragraph, pilots furnished by Owner to assist in operating Equipment of User shall be considered the Sole Employees of User. All such officers, agents, employees, contractors, or Equipment, while engaged in, enroute to or from, or otherwise on duty incident to repairing Equipment, re-railing, or clearing wrecks or derailments or engaged in the repair or renewal of the Joint Property subsequent to any such wreck or derailment shall, for the purpose of this Section 5, be deemed the Sole Employees and/or Sole Property (as applicable) of the party bearing the cost of repair or of the other Loss and/or Damage of the wreck or derailment. Such officers, agents, employees, contractors, or Equipment while enroute from performing such repair, rerailing, or clearing of wrecks or derailments or renewing the Joint Property to perform another type of service shall not be deemed to be performing service incident to the instant repair, rerailing, or clearing of a wreck or derailment.

5.3 As between the parties hereto only:

(a) Each party shall bear all costs of, and shall indemnify, defend and hold the other party harmless from and against, any Loss and/or Damage to its Sole

Employees or its Sole Property, property in its care, custody or control (other than Joint Property) or its invitees WITHOUT REGARD TO FAULT, NEGLIGENCE OR STRICT LIABILITY OF EITHER PARTY.

(b) Loss and/or Damage to third parties (i.e., any person or entity other than an invitee of a party, a party hereto and/or a Sole Employee of either party), Joint Employees, or to Joint Property shall be borne by the parties as follows:

(i) If the Loss and/or Damage is attributable to the acts or omissions (negligent or otherwise) of the Sole Employees of only one party hereto and/or arises from an incident involving Sole Employees of only one party without involvement of Sole Employees of the other party, and with or without the involvement of Joint Employees (negligent or otherwise) and/or Joint Property, that first party shall bear and pay for, and shall indemnify, defend and hold the other party harmless from and against, all such Loss and/or Damage.

(ii) If such Loss and/or Damage is attributable to the acts or omissions of the Sole Employees of both parties hereto and/or arises from an incident involving Sole Employees of each of the parties in the same incident, each party shall equally pay for such Loss and/or Damage, **WITHOUT REGARD TO FAULT, NEGLIGENCE OR STRICT LIABILITY OF EITHER PARTY**, and shall indemnify, defend and hold the other party harmless from the first party's portion of the Loss and/or Damage.

(iii) Where such Loss and/or Damage is not caused or contributed to by the Sole Property or Sole Employees of a party (e.g., an incident involving only Joint Employees) or occurs in such a way that it cannot be determined how such Loss and/or Damage came about, or the Loss and/or Damage is not otherwise expressly covered above, each party shall equally pay for, and shall indemnify, defend and hold the other party harmless from, the first party's portion of such Loss and/or Damage **REGARDLESS OF THE CAUSE OF SUCH LOSS AND/OR DAMAGE.**

(iv.) Notwithstanding any provision to the contrary in this Section 5, as between the parties hereto only, Loss and/or Damage to Joint Property that is 1) wholly attributable to the acts or omissions of a third party and neither the Sole Property nor Sole Employees of either party hereto is involved in the incident giving rise to the Loss and/or Damage, or 2) occurs in such a way that it cannot be determined how such Loss and/or Damage came about, shall be shared by the parties based on the proportionate usage of the Joint Trackage, **REGARDLESS OF THE CAUSE OF SUCH LOSS AND/OR DAMAGE.**

(v.) In no event shall User bear or incur any liability for Loss and/or Damage resulting from environmental contamination of or Hazardous Materials on or released from the Joint Trackage, except contamination or a release of Hazardous Materials arising from or in connection with User's Equipment or Equipment operated by or on behalf of User or caused by, arising from or in connection with the actions or omissions of User or User's employees, agents, contractors, representatives or invitees.

(vi.) Proportionate usage shall be determined by the number of Cars each party hereto operated on or over the Joint Trackage in the most recent twelve (12) consecutive months of normal joint operations prior to the month in which such Loss and/or Damage occurred, or if the month of occurrence cannot be determined, the month in which the Loss and/or Damage was first discovered. In the case the incident occurs or is discovered in the first twelve (12) months of the Agreement, the proportionate usage shall be determined by the number of Cars each party hereto operated on or over the Joint Trackage for the available number of consecutive months of normal joint operations; *provided, that*, within forty-five (45) days after the end of the first twelve (12) consecutive months of normal joint operations in which the Agreement is in effect, the amount paid by each party hereto based on such proportionate usage shall be adjusted to reflect the actual proportionate usage over such twelve-month period.

(c) The parties agree that the characterization herein of certain Employees as "Sole Employees" or "Joint Employees" is only for the purpose of allocating Loss and/or Damage pursuant to this Agreement.

5.4 EXCEPT AS EXPRESSLY PROVIDED OTHERWISE HEREIN, OWNER AND USER EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS AND/OR DAMAGE; AND (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY LEGAL REQUIREMENT BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, THE CLEAN WATER ACT, THE OIL POLLUTION ACT, AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS, ALL AS AMENDED FROM TIME TO TIME.

5.5 Notwithstanding any provision to the contrary herein, no obligations of indemnity of either party shall apply with respect to punitive or exemplary damages to the extent arising from conduct of an indemnified party.

5.6 Each party hereto shall have the right to settle, or cause to be settled for it, all claims for damages for which such party shall be liable under the provisions of this Section 5 and to defend or cause to be defended all suits for recovery of any such damages.

In case a suit shall be commenced against either party hereto for or on account of damages for which the other party hereto may be solely or jointly liable under the provisions of this Section 5, the party so sued shall give notice to such other party of the pendency of such suit and thereupon such other party may assume or join in the defense of such suit.

In the event that more than one of the parties shall be liable hereunder for any damages and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties so jointly liable therefor, release from liability shall be taken for and in the name of all parties so liable. In the event of any settlement in excess of

_____, each party must consent to such settlement. In the event of any settlement for _____, each party must provide notice to the other party prior to entering into such settlement. The parties agree that each party's proportionate share of any settlement shall be in accordance with the provisions of Section 5 of this Agreement.

If a judgment shall be recovered against and satisfied by one party involving a liability which should under this Agreement be borne entirely or participated in by the other party, then all expenses of whatsoever nature, including costs and fees connected with such judgment and with the prosecution of the suit upon which it was based, shall be settled between the parties in strict accordance with the provisions of this Agreement and the party against which such judgment shall have been recovered shall be promptly reimbursed by such other parties to the extent to which the latter is indebted.

Section 6. ASSIGNMENT

This Agreement will be binding upon and inure to the benefit of each of the Parties and to their respective successors and permitted assigns. No Party may assign its rights or obligations under this Agreement to a third party without the written consent of the other Party, except where assignment occurs as a result of a sale or transfer of all or substantially all of a Party's assets pursuant to merger, sale, consolidation, combination, or order or decree of governmental authority.

Section 7. DEFAULT

7.1 Notwithstanding the provisions of Section 3 of these General Conditions, any party hereto claiming a default of any of the provisions of the Agreement (including these General Conditions) shall furnish the other party with written notice of such default, including specific information regarding the default and the particular Section or Sections of the Agreement which have allegedly been breached, along with a demand or request specifying the desired curative action.

7.2 If the default continues and is not cured within thirty (30) days after receipt of such written notice and demand, or reasonable steps have not been or cease to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, then either party shall have the right to terminate the Agreement upon thirty (30) days written notice to the other party for material default and/or pursue any other rights or remedies under this Agreement or available at law or in equity.

7.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting from such subsequent default.

Section 8. OTHER CONSIDERATIONS

8.1 The Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party.

8.2 All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by authorized representatives to the parties hereto.

8.3 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

8.4 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by arbitration under Section 12 of the Agreement.

8.5 The terms of this Agreement have been arrived after considerable arms length negotiation and mutual review of the parties, and the parties agree that none of the provisions herein shall be deemed or presumed to be construed against either party, regardless of which party drafted all or part of the terms of this Agreement.

END OF EXHIBIT "B"

EXHIBIT "C"

In accordance with the Agreement between Northern Lines Railway, LLC ("NLR") and BNSF Railway Company ("BNSF"), Northern Lines Railway agrees to perform or have performed the following work ("Work") on the Joint Trackage with respect to the Capital Project:

1. The Work shall include NLR entering into an agreement with a contractor (the "Work Agreement"), whereby the contractor will furnish all labor, equipment and tools, and will supervise and select materials for the Work. The Work shall include:

1.1 Installing approximately _____ cross-ties that includes a power tamping of individual cross-ties installed east of MP 3.0 (_____) and ties west of MP 3.0 _____ to be surfaced out of face.

1.2 Installing approximately _____ at a location(s) designated by NLR's Engineer.

1.3 Installing approximately _____ at a location(s) designated by NLR's Engineer.

1.4 Relaying approximately _____ jointed rail. The area to be relayed will be delineated by NLR's Engineer. All materials removed from the track shall be stockpiled in St. Cloud at a location(s) designated by NLR's Engineer, and NLR either shall reuse such material on track that NLR leases from BNSF or shall salvage such material pursuant to the terms of the Lease Agreement.

1.5 _____ in the vicinity of St. Cloud (former Performance Seed Co. track and former Cold Spring Granite East). Removing all special track-work from the track and replacing it with _____ plates, spikes and anchors as directed by the NLR's Engineer. Cutting off switch ties that will remain in track to _____ from the base of rail.

1.6 Upgrading the rail in one turnout from _____ rail at a location designated by NLR's Engineer.

1.7 Unloading approximately _____ at a location(s) designated by NLR's Engineer.

1.8 Surfacing out of face behind the ties as they are installed including all turnouts west of MP 3.0. Surfacing 3 spot areas east of MP 3.0 at locations designated by NLR's Engineer.

1.9 Estimated cost for the aforementioned work:

1.10 The Work will be completed prior to the operation of the Grain Shuttle Facility.

2. Prior to beginning the Work and within 30 days of the execution of this Agreement, NLR shall provide BNSF with a bid for the Work (the "Bid"). Within 15 days of receipt of the Bid, BNSF shall notify NLR of its approval or rejection of the Bid. If BNSF approves the Bid, NLR shall begin the Work. If BNSF rejects the Bid, BNSF shall, at its option, (1) request another bid or (2) terminate this Agreement.

3. NLR shall require the Work Agreement to expressly identify BNSF as a third party beneficiary. NLR shall require the contractor performing the Work to comply with the insurance requirements set forth in Exhibit J to the Lease Agreement and identify BNSF as an additional insured on its insurance policies. The Work Agreement also shall condition the payment (or if the payment is in installments, the final payment) to the contractor on a satisfactory joint inspection by BNSF and NLR of the Work.

4. BNSF agrees to pay NLR for the actual cost of the Work up to . NLR shall provide BNSF with one or more invoices for the Work, and BNSF agrees to pay to NLR the amount of such invoices within thirty (30) days after its receipt of such invoices.

5. BNSF and NLR shall agree, in writing, with respect to any other payment provisions, or other obligations of BNSF or NLR, that relate to the Work.

**Exhibit "A" to BNSF
Trackage Rights over NLR
October 21, 2011**

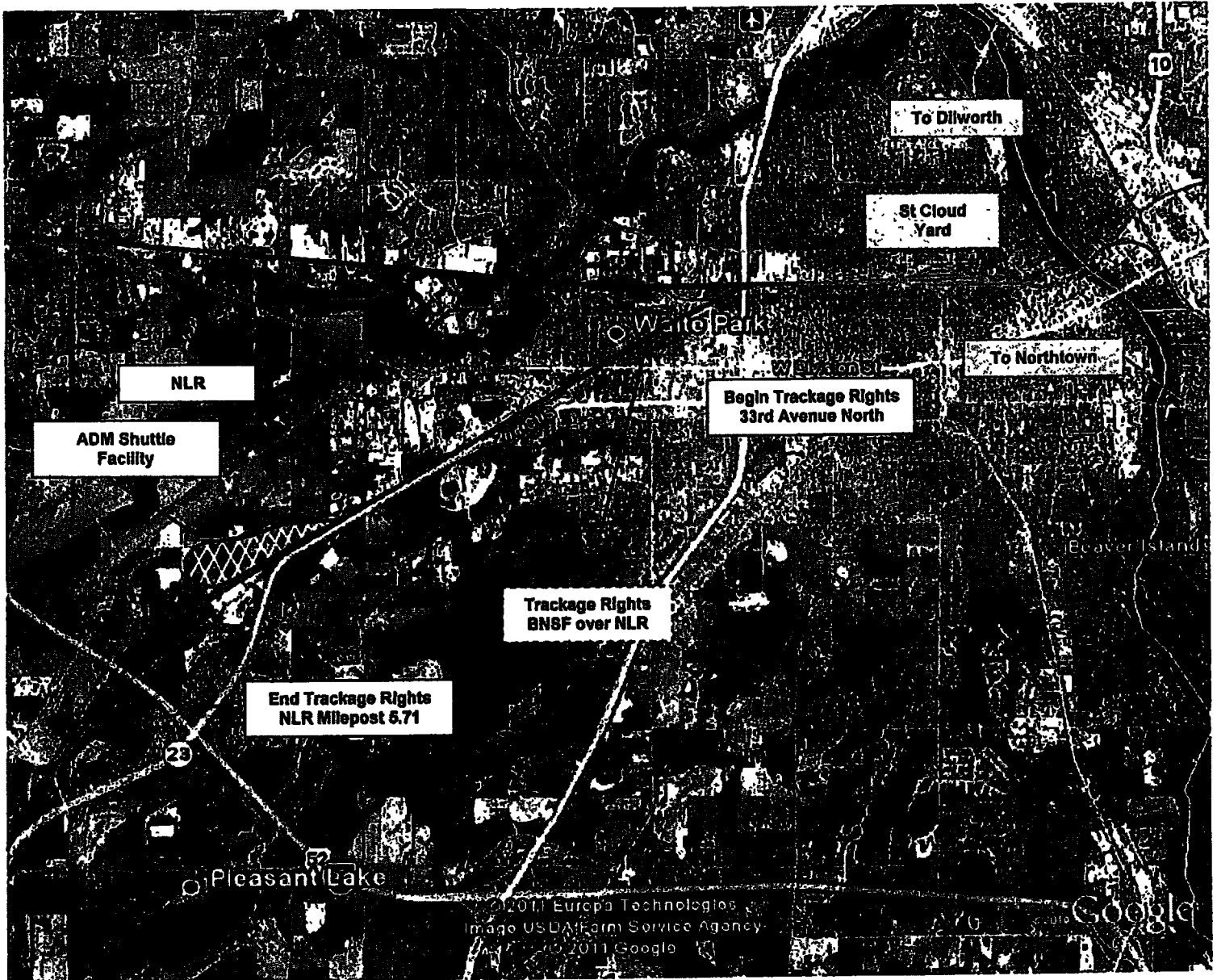


EXHIBIT 2

VERIFICATION

STATE OF TEXAS

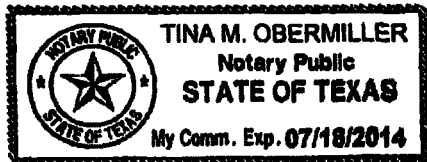
COUNTY OF TARRANT

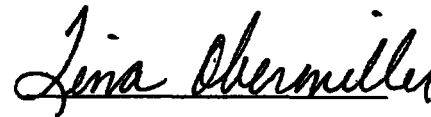
)
) ss.
)

I, Christopher M. Randall, being duly sworn depose and state that I am Director of Shortline Development of BNSF Railway Company, that I am authorized to make this verification, and that I have read the foregoing Notice of Exemption and know the facts asserted therein are true and accurate as stated to the best of my knowledge, information, and belief.


Christopher M. Randall

SUBSCRIBED AND SWORN TO before me this 24 day of July, 2012, in the County of Tarrant, State of Texas.




Notary Public
My Commission Expires: 7/18/2014